

PRESIDENT'S SECRETARIAT (PUBLIC)  
AIWAN-E-SADR, ISLAMABAD

Federal Board of Revenue  
Versus  
M/s A.J Textile Mills Limited, Swabi

Sub: REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 27.04.2016 IN COMPLAINT NO. 08/PWR/ST/(02)/269/2016

I am directed to refer to your representation No. 1(269)S(TO-II)/2016, dated 26<sup>th</sup> May, 2016 on the above subject and to say that the President has been pleased to pass the following orders:

2. This representation dated 26.5.2016 has been filed by the Agency/FBR against the findings of FTO dated 27.4.2016 whereby it has been recommended that:

"FBR is to direct the Chief (CSTRO), FBR to:-

- i. Issue the cheque in RPO 83168 dated 18.01.2016 alongwith compensation under Section 67 of the Act for the period exceeding 7 working days between the dates of issue of RPO and cheque; and
- ii. Report compliance within 21 days."

3. The brief fact of the case are that the complaint has been filed against FBR for non issuance of Sales Tax refund cheques. The complaint was referred to Secretary, Revenue Division for comments in terms of Section 10(4) of the Ordinance. In response Chief (CSTRO) FBR in his letter dated 14.4.2016 has reported that as per government policy announced by the Finance Minister for issuance of cheques for RPOs issued upto 12.02.2016 and amounting upto Rs. 5.0 million, ten (10) cheques for all RPOs upto Rs. 5.0 million mentioned in the complaint have been issued to the complainant. However, cheques for RPO 83168 dated 18.01.2016 amounting to Rs. 11,593,735/- is in the queue and would be issued in due course of time.

4. The contentions of both sides have been considered along with examination of relevant record it is apparent that Chief (CSTRO), FBR has confirmed issuance of 10 cheques and pendency of one cheque. Under Section 10(1) of the Sales Tax Act, 1990, the deptt is required to pay admissible refund claims to the refund claimants within 45 days of their filing. Further under Rule 26A(7) of the Sales Tax Rules, 2006, the deptt is required to issue cheque with 7 working days of issuance of an RPO. It is apparent that non issuance of cheque in the only pending claim is violation of above provision of law/Rules. Thus FTO has issued the aforementioned findings.

5. The instant representation has been filed by the Agency-FBR. The Agency has argued that the refund claims of the Complainant were processed by the system as and when they filed their claims without any further delay.

6. The Agency has pointed out that after processing the refund claims of the complainant, system automatically generates RPO against the admissible amount.

7. The Agency has pleaded that after sanctioning of refund claim, cheques for RPOs were issued on first come first served basis as per date of RPOs as per standard policy in issuance of cheque and no one in the hierarchy of FBR was authorized to make payment of refund to anyone on pick and choose basis. That rather every RPO issued for refund payment is placed in line and cheques were issued strictly following the queue.

8. The Agency has emphasized that the manner of issuance of cheques by CSTRO and related functions have been prescribed under Rule 30(4) to 30(7) of Sales Tax Rules, 2006. The Rule on issuance of cheque by office of CSTRO in Rule 30(5)7 of the Sales Tax Rules, 2006 which doesn't bind the office of CSTRO to issue cheques in terms of number of days and thus the findings/recommendations of the Honourable FTO is based on incorrect of reading of law.

9. The Agency has contended that because of policy of issuing cheques on queue basis, there is practical difficulty in implementing the order of FTO in terms of Section 23 of the Federal Ombudsmen Institutional Reforms Act, 2013, and therefore the said order may not be implemented.

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10. The Agency has prayed that President may annul the findings/recommendations of the Federal Tax Ombudsman and allow office of the CSTRO to issue cheque to complainant as per standard policy and discourage issuance of cheques on priority basis.


11. On the contrary, the complainant has filed his comments against the instant representation of FBR-Agency on 20.6.2016 through Ishtiaq Ahmed, Advocate and supported the impugned recommendations of learned FTO.

12. In terms of Section 9(2)(b) of the FTO Ordinance 2000, the FTO has no jurisdiction to investigate or inquire into the matters which relate to the assessment of income, determination of liability of tax, interpretation of law, rules and regulations relating to the said assessment/ determination in respect of which legal remedies of an appeal, review or revision are available under the relevant legislation.

13. It has already been held vide order No. 88/FTO/2013 dated 05.06.2013 (corresponding Law Division's Summary No.73/2011-Law(FTO) dated 12.06.2013 in Complaint No. 90/LHR/IT(79)/204/2011), that: "matter pertained to assessment of income and determination of liability of tax as also interpretation of law and there is no dispute that legal remedy of appeal as well as revision was available under the Income Tax Ordinance 2001. Findings and recommendations of FTO are not sustainable." In another case No. 384/FTO/2013 dated 09.09.2013 (corresponding Law Division's summary No.50/2012-Law (FTO) dated 24.07.2013 in Complaint No. 181/LHR/IT (128)/ 355/ 2012), it has been held that: "there is no manner of doubt that the matter pertained to determination of liability of tax also involving interpretation of law/ rules relating to such determination and legal remedies of appeal are available under the said Ordinance 2001. . . . Findings do disclose that FTO has assumed unto himself the jurisdiction of appellate authority which is not permissible under the provisions of FTO Ordinance 2000. Findings and recommendations of FTO are therefore not sustainable."

14. The Agency has assured that Rule 30(4) and Rule 30(7) of Sales Tax Rules, 2006 are being followed in letter and spirit and cheques are being issued in line strictly following the queue as per standard policy. In such circumstances, where remedy of appeal was available FTO could not interfere with the matter of assessment of tax and interpretation of law. Thus FTO having gone beyond the scope and powers, the impugned findings are not sustainable. Consequently, the Agency's representation is liable to be accepted.

15. Accordingly, the President has been pleased to accept the representation of the Agency/FBR and set aside the recommendations of FTO.


  
Zulfiqar Hussain Awan  
Director (Legal-II)

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The Chairman,  
Federal Board of Revenue,  
Islamabad.

No.97/FTO/2016 dated 03.10.2016

Copy for information to:

1. M/s A.J Textile Mills Limited, C/o Mr. Ishtiaq Ahmed, Advocate, A-105, Town Tower, University Road, Peshawar.
2. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
3. Director to Secretary to the President.
4. Master file.

  
Zulfiqar Hussain Awan  
Director (Legal-II)